

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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:   
KELLEY AMADEI, et al., :   
: 17-CV-05967 (NGG)  
Plaintiffs, :   
:   
v. :   
: May 1, 2018  
ELAINE DUKE, et al., : Brooklyn, New York  
:   
Defendants. :   
:   
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TRANSCRIPT OF CIVIL CAUSE FOR MOTION HEARING  
BEFORE THE HONORABLE VERA M. SCANLON  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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1 MR. HANDEYSIDE: To the extent that we can be  
2 assured that any applicable national policies could be  
3 captured through a search of the New York offices, that would  
4 go to the policy question. But it wouldn't go to the regular  
5 practice question and that's equally --

6 THE COURT: Let's finish the first one. So for now  
7 are you limiting your request to all applicable policies or --  
8 no, all policies. What's the right phrasing? To all policies  
9 relevant to the issues raised in the complaint that cover CBP  
10 JFK and ICE New York? So I'm trying to cover maybe there was  
11 a policy and they didn't adhere to it, you know, because they  
12 did the wrong thing. So yes, you would capture national,  
13 regional, local office, airport specific policies.

14 MS. OLDS: Correct. They would be at JFK, CBP JFK.  
15 So that's why the search is there.

16 MR. HANDEYSIDE: I think the concern is that we need  
17 to be able to access the policies to which the plaintiffs  
18 would reasonably be exposed. That's the legal question at  
19 hand. So again, the problem is that they're not only flying  
20 to New York. These are -- to the extent these are national  
21 policies and they're uniform in their application, perhaps.  
22 But we just don't know that. So these plaintiffs fly all over  
23 the country domestically. To the extent they're going to be  
24 exposed to the policy at issue, again, that's a legal issue  
25 that's determinative here, we need to be assured that we can

1 access those policies. So we don't know how the policies are  
2 maintained but certainly we didn't think that a unilateral  
3 limitation to the New York area was reasonable absent some  
4 sort of assurance that whatever we would be getting would be  
5 the policies to which they'll be exposed.

6 MS. OLDS: Again, Your Honor --

7 THE COURT: Let me just -- so I understand what  
8 you're saying. You have your other discussion about whether  
9 plaintiff's future domestic travel should be known to the  
10 Government. Hypothetically, you say our clients are flying to  
11 Chicago and Dallas. Are you saying by virtue of that you're  
12 now entitled to locality specific policies at those two  
13 locations?

14 MR. HANDEYSIDE: To the extent that a national  
15 policy is interpreted or applied differently according to  
16 field office, that's relevant. And it's relevant because to  
17 the extent that our plaintiffs are going to continue to fly to  
18 these locations, if they can expect treatment that is dictated  
19 by location, it's relevant to the claims.

20 MS. OLDS: Your Honor --

21 THE COURT: All right. So you're not going to get  
22 that. Right now this case is about this event that happened  
23 in New York and there's no information here about their  
24 particular flights elsewhere or enough information to say that  
25 you can reasonably anticipate that at some other location that

1 this would happen. It's not to say the information might not  
2 develop that that thesis could be put forward. But given what  
3 the complaint specifically is about that you would expect that  
4 the defendants are looking for information, policies that  
5 cover the events at JFK, I'm not saying -- I don't know  
6 whether they're all at, physically located at JFK or JFK  
7 computers or their other federal building. I don't know where  
8 you have information that governs CBP and ICE. But you do  
9 have to produce the policies relevant to the actions  
10 challenged and applied to these events that the plaintiffs  
11 experienced that are at every level. So whatever the national  
12 policy is, if there's a regional policy, if there is a New  
13 York policy, if there is a JFK specific policy, you need to  
14 produce those. If there are -- I guess New York is probably  
15 the best at least place to start. The only other airport that  
16 I think might be in the New York office that accepts  
17 international flights is Stuart. There might be others. If  
18 there are variations on the policies that apply to JFK, you  
19 could produce those. But I don't -- otherwise I don't know if  
20 there's any other airport. I think that the lack of  
21 information about the broad scope of this alleged policy  
22 combined with what seems to be quite a burdensome search given  
23 the number of offices that this discovery is unnecessary at  
24 this point. If you learn information that changes how one  
25 looks at this, you can raise the issue at a later date. But

1 for now, focus on New York and the relevant policies of the  
2 chain.

3 And then the other issue is what is it exactly  
4 you're looking for? This is the plaintiffs. You're saying  
5 other instances where CBP and ICE sought to identify and/or  
6 seize identification from passengers disembarking from US  
7 domestic flights. So both the broad geographic span of that  
8 as well as what exactly are you looking for? Because as  
9 defendant's counsel raised, one would expect that a normal  
10 course of business not similar to your clients there would be  
11 some CBP, ICE request made of passages. For example, what the  
12 defendant's counsel described.

13 MR. HANDEYSIDE: I'm not sure I understand what --

14 THE COURT: So your suggestion was ICE -- some  
15 people who ICE -- who are different from the plaintiffs who  
16 ICE is entitled to seize, take into custody for a warrant,  
17 some sort of detainer order, et cetera, that there is no legal  
18 opposition to that happening. And in order to make sure they  
19 have the right person, ICE may ask, or CBP might ask the  
20 passenger for identification. That's potentially a different  
21 group from the plaintiffs who are making this complaint.

22 MS. OLDS: That's correct, Your Honor. It's very  
23 different. The claim that they're making is that everyone on  
24 the plane, that their identification was required.

25 THE COURT: Right. So it wasn't a specific search,

1 that keeps records. I have no idea what the situation is  
2 here. It doesn't sound like you all do. So you need to get a  
3 handle on whether this would be burdensome, practical,  
4 impractical, et cetera. And then let me know. As it stands  
5 now it seems like it would be an impractical exercise. But if  
6 you have other information along the way, particularly as you  
7 develop the information that you have in New York, or if you  
8 have information from outside of the case that is relevant and  
9 that you're producing to the defendants, you can let me know.  
10 So for the requests there, they're denied without prejudice  
11 subject to being renewed if you have additional information  
12 that supports those requests with the point that -- and that's  
13 understanding the defendants are producing information from  
14 the locality up through national policies that are applied or  
15 applicable to the circumstances in New York.

16 All right. So then the other question you have  
17 outstanding is the other side of this which is the plaintiff's  
18 upcoming domestic flights.

19 MR. HANDEYSIDE: Your Honor, if I could just go back  
20 quickly to the third aspect of this issue was the documents  
21 related to statements by CBP spokespersons indicating that the  
22 identification checks were consistent with CBP policy. So --

23 THE COURT: It's limited to New York.

24 MR. HANDEYSIDE: -- the first was a policy. The  
25 second was the other instances, and the third is just